



April 14, 2000

Ms. Jacqueline Lucci
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77054

OR2000-1496

Dear Ms. Lucci:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 134469.

The Harris County Medical Examiner (the "medical examiner") received a written request for the autopsy report and medical records of the requestor's deceased adult son. You state that the autopsy report has been released to the requestor. You contend, however, that the requested medical records are made confidential under the Texas Medical Practice Act (the "MPA"), Occ. Code § 151.001 *et. seq.* Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 159.002(c) requires that any subsequent release of medical records be consistent with the purposes for which the medical examiner obtained the records. *See* Open Records Decision No. 565 at 7 (1990). On the other hand, section 159.006(a) of the Occupations Code provides as follows:

Unless the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, a physician who receives a written consent for release of information as provided by Section 159.005 shall furnish copies of the requested medical records, or a summary or narrative of the records, *including records received from a physician or other health care provider involved in the care or treatment of the patient.* The physician shall furnish the information not later than the 30th day after the date of receipt of the request. [Emphasis added.]

We thus conclude that pursuant to section 159.006(a), the medical examiner must release the medical records at issue upon receipt of a signed, written consent for the release of the records as provided by section 159.005. Section 159.005(a)(5) provides that the “personal representative” of the deceased is one such individual entitled to authorize the release of such records. Additionally, the consent to release must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code § 159.005(b).

We have reviewed the records request received by the medical examiner and find that the request does not comport with the requirements of section 159.005(b). Consequently, the medical examiner must withhold the requested records at this time. However, upon receipt of a proper consent to release executed by the deceased’s “personal representative,” the medical examiner must release the medical records at issue to the requestor.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

¹This ruling does not address whether the requestor here constitutes a “personal representative” of the deceased for purposes of section 159.005(5). *See* Open Records Decision No. 632 (1995) (discussing definition of “personal representative” for purposes of section 773.093 of Health and Safety Code).

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

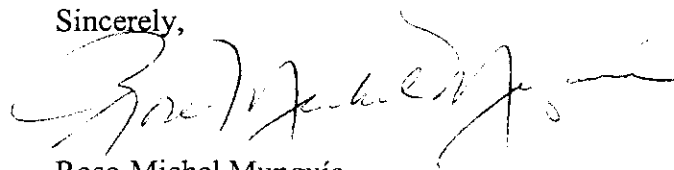
benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguia
Assistant Attorney General
Open Records Division

RMM/RWP/ch

Ref.: ID# 134469

cc: Mr. Joe Faulkner
307 Elkins Lake
Huntsville, Texas 77340
(w/o enclosures)